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May 16, 2006

## **AGENDA ITEM 7-B**

**TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION  
COMMITTEE**

**I. SUBJECT:** Assembly Bill 2438 (Chu) – As Amended  
March 26, 2006

Retirement Credit: Compensation for Work-Related  
Injury

*Sponsor: California School Employees Association*

**II. PROGRAM:** Legislation

**III. RECOMMENDATION:** Support

This bill would make a clarifying amendment to the definition of “compensation” in the Public Employees’ Retirement Law (PERL) to include Workers’ Compensation temporary disability payments made to a school member; and simplifies administration without increasing benefits.

## **IV. ANALYSIS:**

The bill would make a clarifying amendment in the definition of “compensation” under the PERL to allow a member employed at a school district or at a community college district to have their Workers’ Compensation temporary disability payments reported to CalPERS for purposes of receiving service credit.

### **Background**

#### **CalPERS Reportable Compensation**

The PERL defines the remuneration that is considered “compensation” for purposes of determining required contributions and retirement benefits. This definition specifies two requirements that must be met for compensation to be reportable. First, the payments must be paid out of funds controlled by the employer. Second, the payment must be made for the member’s services performed during normal

working hours, or for the time that the member is excused from work because of: holidays; sick leave; industrial disability leave; vacation; compensatory time off; or leave of absence. It further states that payments for industrial disability leave are only reportable compensation when payable pursuant to Labor Code section 4800 and 4850 and pursuant to a stipulated article in the Government Code (commencing at section 19869). To qualify as “compensation” for retirement purposes under CalPERS, the payments must meet both requirements.

In 2005, the Actuarial Employer Services Branch issued Circular Letters 200-209-05 and 200-255-05 to County Superintendents of Schools and Individual School Districts to clarify that the reporting of Workers’ Compensation temporary disability payments for school employees did not meet the definition of “compensation” and should not be reported to CalPERS.

#### CalPERS Service Credit Election Provisions

Although Workers’ Compensation temporary disability payments are not reportable to CalPERS as “compensation”, a member is eligible to purchase service credit for the related leave upon returning to work. Under this service credit election option, the member must pay his or her employee contributions plus interest and the employer would be responsible for their share of the cost.

#### CalSTRS Reportable Compensation

According to the Education Code, a school employee of a school district or a community college district who is absent because of a *work-related injury or illness* is required to endorse his or her Workers’ Compensation temporary disability check over to the district. The district then adds to the disability amount the amount of leave time necessary to bring the employee’s compensation to his or her normal wage. The district then issues the employee a check in an amount up to the employee’s normal wage or salary less appropriate deductions, including, but not limited to the employee’s retirement contributions.

#### **Proposed Changes**

The bill would make a clarifying amendment in the definition of “compensation” under the PERL to allow a member employed at a school district or at a community college district to have their Workers’ Compensation temporary disability payments reported to CalPERS for purposes of receiving service credit.

#### **Legislative History**

1995 Chapter 379 (SB 541, Hughes) defined “compensation” as remuneration paid out of funds controlled by the employer in payment for the member's services performed during normal working hours or for time during which the member is excused from work because of: holidays; sick leave; industrial

disability leave, during which, benefits are payable pursuant to Sections 4800 and 4850 of the Labor Code or Article 4 (commencing with Section 19869) of Chapter 2.5 of Part 2.6; vacation; compensatory time off; or leave of absence. The bill also provided reporting instructions for employers.

*CalPERS' position: Sponsor*

- 1993 Chapter 1297 (SB 53, Russell) defined "compensation" as the remuneration of "compensation earnable" for purposes of determining required contributions and benefits, and revised compensation reporting requirements by employers. *CalPERS' position: Sponsor*

## **Issues**

### **1. Arguments by Those in Support**

The sponsor states that this clarification will ensure that classified employees of school districts and community college districts continue to receive CalPERS retirement credit when they are on a Workers' Compensation Temporary Disability Leave and will be treated like teachers and state employees.

*Organizations in Support: California School Employees Association (Sponsor); California Association of School Business Officials; Service Employees International Union*

### **2. Arguments by Those in Opposition**

There is no known opposition at this time.

### **3. This Bill Addresses an Inconsistency in the Definition, Application, and Reporting of Compensation Between CalPERS and CalSTRS**

The California Education Code and the PERL are not consistent in defining reportable compensation for retirement purposes, specifically as it pertains to Workers' Compensation temporary disability benefits. Consequently, school districts are allowed to report temporary disability payments to CalSTRS, but the same Workers' Compensation temporary disability benefits do not meet the definition of "compensation" under the PERL and are, therefore, not reportable to CalPERS. This bill would make the definition of reportable compensation under the Education Code and the PERL consistent as it relates to Workers' Compensation temporary disability benefits.

### **4. This Bill Simplifies the Administrative Process**

Currently, Workers' Compensation temporary disability payments are not being reported to CalPERS, but a member is eligible to elect service credit for the related leave upon returning to work. Under this election option, a member

would pay his or her employee contributions plus interest through completion of payment. If this bill were enacted, it would simplify the process without increasing benefits because a member is already eligible for this service. A member employed at a school district or at a community college would no longer need to make an election at the end of his or her leave but would instead make his or her employee contributions during his or her leave. Likewise, the school district would make their employer contribution during the leave rather than having it show up as a liability loss if the member purchases the time.

5. Legislative Policy Standards

The Board's Legislative Policy Standards suggest a support position on proposals which provide remedies for inequitable, unfair or discriminatory benefits. AB 2438 resolves an inequity by making a clarifying amendment to the definition of "compensation" to provide for consistency of its meaning under both the Government and Education Codes for members employed at a school district or community college district.

**V. STRATEGIC PLAN:**

This item is not a product of the CalPERS strategic plan, but an ongoing responsibility of the CalPERS Office of Governmental Affairs.

**VI. RESULTS/COSTS:**

Program Costs

This bill would reduce the member cost because they would no longer have to pay interest since the employee would simply continue to make his or her employee contributions during his or her leave. The employer cost should remain the same because the school district would make their employer contribution during the leave, rather than having it show up as a liability loss if the member purchases the time at a later date.

Administrative Costs

There are no known administrative costs at this time.

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